

PREMATURE FINAL:

The finality of the September 19, 2001 action was premature and the finality of that action should be withdrawn. The following four reasons are given as to why the finality should be withdrawn:

1. Claims 37 and 80 have never been treated, neither in the first Office Action, nor in the Final Rejection. These two claims have never been rejected, nor have they been indicated to be allowable. Further, if by chance these two claims are rejected in the next Office Action, then it would also be inappropriate to make that action final.

2. In paragraph 9 of the September 19, 2001 action, claims 95 and 99-103 were rejected under 35 USC 103 as unpatentable over Neumann et al., Davis et al., Vazana, Hayes Jr., and Burgis. In paragraph 10 these claims were indicated to be allowable.

3. By the amendment of July 9, 2001, claim 63, which depended directly on claim 1, was incorporated substantially verbatim into claim 1. In the first Office Action, claim 63 was rejected using only the Neumann et al. and Davis et al. references. In the most recent action claim 1 was rejected using the references to Neumann et al., Davis et al. and Vazana. This constitutes a new ground of rejection for the identical subject matter of original claim 63. This new ground of rejection was not necessitated by changes to the claimed subject matter, as can clearly be seen when original claim 63 is compared to claim 1,

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as amended. Thus, the examiner's allegation that the new grounds of rejection were necessitated by amendment to the claims is not accurate, and the finality of the September 19, 2001 action should be withdrawn.

The identical relationship is also true between claims 106 and 72.

4. Within paragraph 2 of the Office action, on page 6 lines 1 and 15, as well as the lines therebetween, the examiner indicates that Davis et al. teaches "means for disconnecting the call after a predetermined number of rings, whereby the disconnecting means prevents the call from incurring a telephone toll charge." Such a recitation cannot be found anywhere in the Davis et al. reference. In fact, at column 3, lines 26-42 Davis et al. speaks of the head-end receiving the call and sending back a signal at 300 hertz. After that, the remote unit sends a signal at 1500 hertz. Clearly, this is not a case of the information being transmitted and the call being disconnected before the head-end answers the call.

Thus, the examiner's characterization of Davis et al. is not correct. Further, this is the same error in viewing the reference to Davis et al. which the examiner made in the first Office Action in his rejection of claims 63-65 and 106.

ARGUMENTS RE REJECTIONS:**Format of the rejections:**

All of the rejections in the September 19, 2001 rejection use the basic combination of references Neumann et al. in view of Davis et al. and Vazana. These three references each transmit different types of data. Neumann et al. transmits analog data, based on how full is the container. Davis et al. transmits digital data, in the form of one of several different conditions. Vazana transmits simple yes or no data. With three entirely different types of data, the conclusion that it would have been obvious to combine their teachings clearly must come under suspicion.

As put together by the examiner, the rejection would have us believe (see the first 12 lines of page 4 of the action) that it would have been obvious to modify the analog system of Neumann et al. by providing different telephone numbers for the various conditions sensed at the remote locations, in other words converting the analog data of Neumann et al. to digital data somewhat similar to that of Davis et al. The rejection has us then go on to modify this modified communication system by adding the means of Vazana whereby the combination communication system would again be substantially modified by adding the concept of ending the call before the "head-end" answers.

The examiner tried to word his rejection as if one piece is added to Neumann et al., and after that an unrelated second piece

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added. However, the situation is not so simple. The second piece being added is within the communication system and the type of data being transmitted. Thus, this second modification is at precisely the same point as the first change which was made to Neumann et al., which clearly implies against the totality of the changes being obvious to one skilled in the art.

In the real world, however, given the disclosures of Neumann et al., Davis et al. and Vazana, what appears more likely to happen in trying to construct the structure recited in the claims, is that the communication system of Davis et al. would be modified by Vazana, and then this modified communication system would be used to replace the communication system of Neumann et al. Putting the references together in this manner often, just as it does here, implies patentability for the claimed structure.

This rejection is tantamount to modifying the modifier, and then adding this modification to the system of Neumann et al..

It is a fairly well accepted tenant in patent law that this format of rejection usually implies patentability for the claims.

In each of paragraphs 3, 4, 6 and 8 of the Office Action, the examiner has taken the base rejection of Neumann et al., Davis et al. and Vazana, and added a fourth reference, Fahie et al., Hayes Jr., Leighton et al., and Pepper respectively. Thus, in each of these paragraphs an already fallacious rejection has been made even more complicated by adding a fourth reference.

Further, in each of these paragraphs, the examiner has made a third modification to the communication system, which communication system has already been modified twice in the base rejection. Certainly, given exactly the appropriate circumstances, a rejection is not made invalid strictly by the number of references. But this set of references, and the combination of modifications which has had to be made, does not provide that set of circumstances. Every reference added to the base reference of Neumann et al. is being added to further modify the communication system. Thus, in each of these paragraphs the examiner has effectively modified the communication system a third time. These rejections and modifications of the communication system have clearly become way too convoluted to be considered obvious modifications to one skilled in the art.

In paragraphs 5, 7 and 9 the examiner has modified the base combination, this time by adding a fourth and fifth reference. Every one of these additional references has been added, as before, to further modify the communication system of Neumann et al. Clearly again, these are rejections which cannot properly stand as valid.

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Arguments re Specific Claims:

Looking at claim 23 specifically, it is noted that claim 23, depends on claim 9, and yet is rejected using fewer references than are used in the rejection of claim 9.

Claim 9 recites a first power supply, and the examiner depends on the reference to Hayes Jr. to show the first power supply. Then claim 23 adds a second power supply. Claim 23 is rejected as unpatentable over the base combination of references, Neumann et al., Davis et al., and Vazana. Nowhere in this combination of references does the examiner tell us where he finds the first power supply.

Claims 33-35 are rejected in paragraph 5 on page 11 of the Office Action using the combination of references Neumann et al., Davis et al., Vazana and Allport. It is noted that the examiner never tells us where he finds the first or the second power supply (physically recited in claims 9 and 23, on which claim 33 depends) in the noted combination of references.

With regard to claim 64-68, the examiner, on pages 6 of the action, would have us believe that Davis et al. teaches the modem and caller ID unit, as well as the way in which these elements connect to the rest of the system. In fact, however, such teaching cannot be found in Davis et al. Thus from the rejection, it is not clear where the examiner finds the structure needed to reject claims 64-68, especially the limitations specifically added by these claims.

With regard to the rejection of claims 58-62, on pages 12 and 13 of the action, the examiner talks about the "half-hook" detecting means. Such recitation is not understood. The claims and the reference to Bella both speak of "off-hook" detecting means. Perhaps this is what the examiner means?

With regard to paragraph 9 on page 14 of the Office Action, it is noted that among other claims, 95 and 99-103 have been rejected. However, in paragraph 10 on page 15 it is noted that these claims are indicated to be allowable. It is assumed that these claims were indeed intended to be allowed.

Specific Arguments re Prior Art:

With regard to the examiner's rejection of claims 1-7, 23-24, 36, 38, 41, 43-46, 57-58, 64-68, 69-70, 72-79, 81-82, and 107, the examiner has indicated (see page 6 of the action) that the patent to Davis et al., at column 3, line 26-42, teaches means to disconnect the call before a connection is made. However, this is not the case. In column 3, lines 26-42, Davis et al. indicate that the remote unit senses a change, and depending upon what the change is, their apparatus dials one of three numbers. The head-end receives the call, and sends back a signal at 300 Hertz. Thus clearly, the head-end has answered the call so as to be able to send a message back to the remote unit. Then the remote unit sends a signal at 1,500 Hertz to say "yes, it was me that sent the message". Again, it is clear that a connection between the two has been completed for such communications to be sent. In column 3, lines 40-42, Davis et al. indicate that after the above communication, the units are then disconnected. Clearly, the two units in Davis et al. connect to each other, and, as opposed to the recitations of former claims 63 and 106, now incorporated into claims 1 and 72 respectively, it is clearly recited that the connection is never completed, but rather that the information is passed by means other than connecting the call between the units.

Thus, claims 1 and 72 clearly recite this non-connection, which constitutes one of the distinct advantages of the

applicants' invention. Claims 1 and 72 include the ability to gather information and transmit that information before a call is actually completed, and in fact end the call before the call is connected. This assures that the data is transferred in as little time as possible.

In claims 66-68, this means is recited as the caller ID unit. Accordingly, the caller ID unit is an integral part of the means for passing information without completing a phone call. However, in the patent to Davis et al., there is no mention of a caller ID unit. Davis et al. does say that the cable television computer determines, by the caller's telephone number, which addressable converter box is to be unscrambled, but this is not the same as saying that the cable company uses a "caller ID" unit for such purposes.

Moreover, the invention, as it is recited in all of the claims of this application, includes structure or method steps that cannot be properly be rejected using the prior art cited by the examiner.

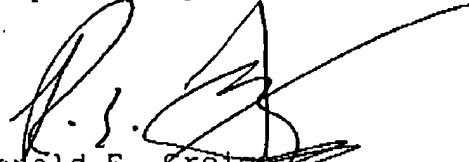
To make his proposed rejection, the examiner has had to modify the system of Neumann et al. by modifying the structure the communication system of Neumann et al. Then this combination is again modified by changing the communication system again, and in some of the rejections the communication system is modified a third time. Clearly, this does not constitute a rejection that can be sustained.

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Reconsideration and allowance of the claims is courteously solicited.

Respectfully submitted,



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